

2-1934

## Conflict of Laws-Foreign Corporations-Stockholder's Individual Liability

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### Recommended Citation

(1934) "Conflict of Laws-Foreign Corporations-Stockholder's Individual Liability," *Indiana Law Journal*: Vol. 9 : Iss. 5 , Article 4.

Available at: <https://www.repository.law.indiana.edu/ilj/vol9/iss5/4>

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## RECENT CASE NOTES

**CONFLICT OF LAWS—FOREIGN CORPORATIONS—STOCKHOLDER'S INDIVIDUAL LIABILITY**—Plaintiff brought an action against defendants, common stockholders of the Acme Manufacturing Company, an Indiana corporation, for amounts due on three trade acceptances given in Tennessee. The Acme Company was an Indiana corporation doing business in Tennessee without having complied with their statute pertaining to qualification of foreign corporations doing business in that state. Plaintiff sought to hold them individually liable, on the theory that the law of Tennessee, as interpreted by the Supreme Court of that state, imposes partnership liability on stockholders of a foreign corporation which has failed to comply with their statute. Plaintiff's complaint contained no allegation that defendants were domiciled in Tennessee, nor that any of them knew of or took part in any of these transactions; nor that the articles of incorporation in any way indicated or authorized the doing of business in Tennessee. Defendants demurred for insufficient facts. The demurrer was sustained and plaintiff appealed. Held, affirmed.<sup>1</sup>

As a general proposition the law of the jurisdiction granting the charter to a corporation determines the liability of its shareholders. When one becomes a shareholder in a corporation he is said to contract with reference to all the laws of the state under which the corporation is organized.<sup>2</sup> In some instances, however, liability may be imposed upon the shareholders by the law of another jurisdiction. This is true where agents of the corporation have performed acts in the foreign jurisdiction. But before the foreign state may impose such liability it must be shown that the shareholder is subject to the legislative jurisdiction of that state.<sup>3</sup> When such jurisdiction is shown, the liability may be enforced in any jurisdiction.<sup>4</sup> In the principal case, the corporation has caused acts to be done by its agents in a foreign jurisdiction. Thus the sole question involved is: Did the state of Tennessee acting through its legislature have jurisdiction over defendant shareholders?

Upon an examination of the authorities, it is apparent that the precise question involved here, has never been before an Indiana court, and has seldom been raised in the courts of other states. From the meager authority available, however, it is evident that the state may through its

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<sup>1</sup> *Towle v. Beistle*, Appellate Court of Indiana, June 27, 1933, 186 N. E. 344.

<sup>2</sup> *First National Bank of Deadwood v. Gustin Minerva Con. Min. Co.* (1890) 42 Minn. 327, 44 N. W. 198; *Hayward v. Sencenbaugh* (1890), 141 Ill. A. 395; *Ball v. Anderson* (1900), 196 Pa. St. 86; 46 Atl. 366. See also notes in 13 L. R. A. 56 and 33 L. R. A. (N. S.) 895.

<sup>3</sup> American Law Institute, *Restatement of Conflict of Laws*, Proposed Final Draft No. 1, Sec. 209; *Thomas v. Matthiessen* (1913), 232 U. S. 221, 58 L. Ed. 577.

<sup>4</sup> American Law Institute, *Restatement of Conflicts of Laws*, Proposed Final Draft No. 1, Sec. 210.

legislature exercise jurisdiction over shareholders of a foreign corporation in three different instances.

First, where the articles of incorporation expressly authorize that business be carried on in a foreign jurisdiction. The earliest case is *Pinney v. Nelson*,<sup>5</sup> decided by the United States Supreme Court, involving the liability of a stockholder of a corporation expressly organized to carry on business in California. The basis of the court's decision is that the stockholders contracted with reference to the laws of California. The court failed to pay any attention to the fact that the stockholders were domiciled in California. The New York court<sup>6</sup> later refused to follow, in a case similar to *Pinney v. Nelson* except that the stockholders were non-residents of California, distinguishing *Pinney v. Nelson*, on the ground that there the stockholders were domiciled in California. Whatever doubt may have existed as to that point was removed by the decision of the United States Supreme Court in *Thomas v. Matthiessen*,<sup>7</sup> which held that the liability of a non-resident stockholder of a foreign corporation, organized to do business in California was governed by the law of California. Such a rule has been followed in most of the state courts where the question has arisen.<sup>8</sup> And it is not necessary that all of the business shall be carried on in that state. It is sufficient that any part of the business is to be carried on there.<sup>9</sup> Nor is it material that the stockholder expressly stipulates that he is not to be personally bound. If he becomes a stockholder under these conditions he will be bound by the law of that state as to acts done therein.<sup>10</sup>

Second, where the stockholder has taken part in causing the act to be done there. Thus in *Mandeville v. Courtright*,<sup>11</sup> defendants actively operating a dental business in Pennsylvania, incorporated under the law of New Jersey were personally liable for injury caused to plaintiff. Several of the courts<sup>12</sup> class these as "participating" stockholders and they are classed as such by the Indiana court in the principal case.

Third, where the shareholder is domiciled in the state.<sup>13</sup> It is submitted

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<sup>5</sup> (1901), 183 U. S. 144, 46 L. Ed. 125.

<sup>6</sup> *Coulter Dry Goods Co. v. Rosenbaum* (1911), 134 N. Y. S. 487.

<sup>7</sup> (1913), 232 U. S. 221, 58 L. Ed. 577. However a general authorization is not sufficient, see *Risdon Iron and Locomotive Works v. Furness* (1906), 1 K. B. 49.

<sup>8</sup> *Thomas v. Wentworth Hotel Co.* (1910), 158 Cal. 257, 110 Pac. 942. The Federal Courts have not taken a definite stand. In *Leyner Engineering Works v. Kempner* (1908), 163 Fed. 605, the learned judge said the doctrine was monstrous. No doubt he was ignorant of *Pinney v. Nelson*. In *Thomas v. Matthiessen*, (1913), 192 Fed. 495, the court said there was no liability unless the shareholder authorized such acts.

<sup>9</sup> *Thomas v. Wentworth Hotel Co.* (1910), 158 Cal. 275, 110 Pac. 942.

<sup>10</sup> *Thomas v. Matthiessen* (1913), 232 U. S. 221, 58 L. Ed. 577; *Thomas v. Wentworth Hotel Co.* (1910), 158 Cal. 275, 110 Pac. 942.

<sup>11</sup> (1905), 142 Fed. 97.

<sup>12</sup> *Peck v. Noe* (1908), 154 Cal. 351, 97 Pac. 865; *Empire Mills v. Alston Grocery Co.* (1891), (Texas), 15 S. W. 200; *Cunningham v. Shellby* (1916), 136 Tenn. 176, 188 S. W. 1147.

<sup>13</sup> American Law Institute, *Restatement of Conflict of Laws*, Proposed Final Draft No. 1, Sec. 209, Comment. (b); See also Hohfeld, *The Individual Liability of Stockholders and The Conflict of Laws*, 10 Col. L. Rev. 233 (296).

that no one will question this legal proposition. Domicile has always been the basis for legislative jurisdiction.<sup>14</sup>

Examining the principal case it is clear that the state of Tennessee had no legislative jurisdiction over defendant stockholders.<sup>15</sup> Defendants were non-resident; the articles of incorporation neither impliedly or expressly authorized the doing of business outside the state of Indiana; they took no part in causing the acts to be done there, in fact, were entirely ignorant of them. Since the shareholders were not subject to the jurisdiction of the state of Tennessee, it follows that the Indiana court reached a correct result in not applying the law of Tennessee.

C. M.